



2175 SC
#21
9-18-02

SZABO 201.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Andrew J. Szabo
Serial No. : 09/400,649
Filed : 9/21/99
For : NUTRITIONAL OPTIMIZATION SYSTEM AND METHOD
Art Unit : 2175
Examiner : Samuel G. Rimell

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August 28, 2002

Hon. Commissioner of Patents
& Trademarks
Washington, DC 20231

Sir:

REQUEST FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION

Applicants have now received an Office Action dated August 13, 2002, which has been marked "FINAL" because "All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114." Applicant respectfully submits that the Examiner is in error in designating this rejection "FINAL".



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In the response mailed May 3, 2002 in the above identified application, the Examiner indicated "The proposed amendments of claims 29, 44, 59 and 67 raise new issues requiring further consideration." In particular, Applicant notes that claim 59, as proposed in the Amendment submitted April 11, 2002, included the language "optimizing a presented ranking of the records based on both the economic parameters and the relevance parameter.". This language corresponds to at least a portion of the Amendments to current claim 59, and therefore, new claim 59 must raise the same new issues as prior claim 59.

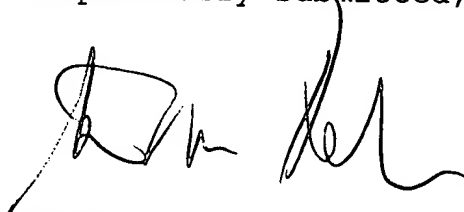
The standards for refusal to consider new issues presented in a claim presented After Final rejection are the same as those which preclude entry of a final rejection at this time.

Applicant also notes that there are numerous additional amendments to the claims, which must surely raise new issues of patentability, which must be considered, and therefore, Applicant believes it wholly inappropriate for prosecution on the merits to be closed at this point without addressing these issues.

The Examiner's conclusion as to the meaning of the claims terms and phrases is wholly conclusary and ignores the meaning which the art attributes.

Applicant, therefore, respectfully requests reconsideration of the issuance of the final rejection of the application.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Services as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on 8/28/02

MILDE & HOFFBERG, LLP

By 

Date 8/28/02